

ASSEMBLY BILL

No. 2279

Introduced by Assembly Member Swanson

February 24, 2012

An act to amend Section 41320.1 of the Education Code, relating to school districts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2279, as introduced, Swanson. School districts: emergency apportionments: trustees.

Existing law authorizes the governing board of a school district to request an emergency apportionment through the Superintendent of Public Instruction if the governing board of a school district determines during a fiscal year that its revenues are less than the amount necessary to meet its current year expenditure obligations. Existing law provides that if a school district accepts an emergency apportionment the Superintendent shall, among other things, appoint a trustee who has recognized expertise in management and finance, and may employ, on a short-term basis, any staff necessary to assist the trustee. Existing law also provides that the trustee, and any necessary staff, shall serve until the emergency apportionment loan is repaid, the school district has adequate fiscal systems and controls in place, and the Superintendent has determined that the school district's future compliance with an approved fiscal plan is probable.

This bill would instead provide that the trustee, and any necessary staff, shall serve until the emergency apportionment loan is repaid, the school district has adequate fiscal systems and controls in place, or the Superintendent has determined that the school district's future compliance with an approved fiscal plan is probable. The bill would

also make a conforming change and several technical, nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 41320.1 of the Education Code is
2 amended to read:
3 41320.1. Acceptance by the *school* district of the
4 apportionments made pursuant to Section 41320 constitutes the
5 agreement by the *school* district to all of the following conditions:
6 (a) The Superintendent ~~of Public Instruction~~ shall appoint a
7 trustee who has recognized expertise in management and finance
8 and may employ, on a short-term basis, any staff necessary to assist
9 the trustee, including, but not limited to, certified public
10 accountants, as follows:
11 (1) The expenses incurred by the trustee and any necessary staff
12 shall be borne by the *school* district.
13 (2) The Superintendent shall establish the terms and conditions
14 of the employment, including the remuneration of the trustee. The
15 trustee shall serve at the pleasure of, and report directly to, the
16 Superintendent.
17 (3) The trustee, and any necessary staff, shall serve until the
18 loan authorized by this section is repaid, the *school* district has
19 adequate fiscal systems and controls in place, ~~and or~~ the
20 Superintendent has determined that the *school* district's future
21 compliance with the fiscal plan approved for the *school* district
22 under Section 41320 is probable. The Superintendent shall notify
23 the county superintendent of schools, the Legislature, the
24 Department of Finance, and the Controller no less than 60 days
25 ~~prior to~~ before the time that the Superintendent expects *one of*
26 these conditions to be met.
27 (4) Before the *school* district repays the loan, including interest,
28 the recipient of the loan shall select an auditor from a list
29 established by the Superintendent and the Controller to conduct
30 an audit of its fiscal systems. If the fiscal systems are deemed to
31 be inadequate, the Superintendent may retain the trustee until the
32 deficiencies are corrected. The cost of this audit and any additional
33 cost of the trustee shall be borne by the *school* district.

(5) Notwithstanding any other law, all reports submitted to the trustee are public records.

(6) To facilitate the appointment of the trustee and the employment of any necessary staff, for the purposes of this section, the Superintendent is exempt from the requirements of Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code and Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(7) Notwithstanding any other law, the Superintendent may appoint an employee of the department to act as trustee for up to the duration of the trusteeship. The salary and benefits of that employee shall be established by the Superintendent and paid by the school district. During the time of appointment, the employee is an employee of the school district, but shall remain in the same retirement system under the same plan as if the employee had remained in the department. Upon the expiration or termination of the appointment, the employee shall have the right to return to his or her former position, or to a position at substantially the same level as that position, with the department. The time served in the appointment shall be counted for all purposes as if the employee had served that time in his or her former position with the department.

(b) The trustee appointed by the Superintendent shall monitor and review the operation of the *school* district. During the period of his or her service, the trustee may stay or rescind any action of the local ~~district~~ governing board of the *school district* that, in the judgment of the trustee, may affect the financial condition of the *school* district. The Superintendent may establish timelines and prescribe formats for reports and other materials to be used by the trustee to monitor and review the operations of the *school* district. The trustee shall approve or reject all reports and other materials required from the *school* district as a condition of receiving the apportionment. The Superintendent, upon the recommendation of the trustee, may reduce any apportionment to the *school* district in an amount up to two hundred dollars (\$200) per day for each late or unacceptable report or other material required under this part, and shall report to the Legislature any failure of the *school* district to comply with the requirements of this section. If the Superintendent determines, at any time, that the fiscal plan approved for the *school* district under Section 41320 is

1 unsatisfactory, he or she may modify the plan as necessary, and
2 the *school* district shall comply with the plan as modified.

3 (c) At the request of the Superintendent, the Controller shall
4 transfer to the department, from an apportionment to which the
5 *school* district would otherwise have been entitled pursuant to
6 Section 42238, the amount necessary to pay the expenses incurred
7 by the trustee and associated costs incurred by the county
8 superintendent of schools.

9 (d) For the fiscal year in which the apportionments are disbursed
10 and each year thereafter, the Controller, or his or her designee,
11 shall cause an audit to be conducted of the books and accounts of
12 the *school* district, in lieu of the audit required by Section 41020.
13 At the Controller's discretion, the audit may be conducted by the
14 Controller, his or her designee, or an auditor selected by the *school*
15 district and approved by the Controller. The costs of these audits
16 shall be borne by the *school* district. These audits shall be required
17 until the Controller determines, in consultation with the
18 Superintendent, that the *school* district is financially solvent, but
19 in no event earlier than one year following the implementation of
20 the plan or later than the time the apportionment made is repaid,
21 including interest. In addition, the Controller shall conduct quality
22 control reviews pursuant to subdivision (c) of Section 14504.2.

23 (e) For all purposes of errors and omissions liability insurance
24 policies, the trustee appointed pursuant to this section is an
25 employee of the local-~~education~~ *educational* agency to which he
26 or she is assigned. For the purpose of workers' compensation
27 benefits, the trustee is an employee of the local-~~education~~
28 *educational* agency to which he or she is assigned, except that a
29 trustee appointed pursuant to paragraph (7) of subdivision (a) is
30 an employee of the department for that purpose.

31 (f) Except for an individual appointed by the Superintendent as
32 trustee pursuant to paragraph (7) of subdivision (a), the
33 state-appointed trustee is a member of the State Teachers'
34 Retirement System, if qualified, for the period of service as trustee,
35 unless the trustee elects in writing not to become a member. A
36 person who is a member or retirant of the State Teachers'
37 Retirement System at the time of appointment shall continue to
38 be a member or retirant of the system for the duration of the
39 appointment. If the trustee chooses to become a member or is
40 already a member, the trustee shall be placed on the payroll of the

1 school district for the purposes of providing appropriate
2 contributions to the system. The Superintendent may also require
3 that any individual appointed as trustee pursuant to paragraph (7)
4 of subdivision (a) be placed on the payroll of the school district
5 for purposes of remuneration, other benefits, and payroll
6 deductions. For the purpose of workers' compensation benefits,
7 the state-appointed trustee is deemed an employee of the local
8 ~~education~~ *educational* agency to which he or she is assigned, except
9 that a trustee who is appointed pursuant to paragraph (7) of
10 subdivision (a) is an employee of the department for that purpose.

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